

## AGENDA BILL APPROVAL FORM

<b>Agenda Subject:</b> Adoption of Resolution No. 4535, extending for six months, the moratorium on development within the 100-year FEMA floodplain		<b>Date:</b> October 27, 2009
<b>Department:</b> Planning, Building and Community	<b>Attachments:</b> Resolution No. 4535	<b>Budget Impact:</b> none
<b>Administrative Recommendation:</b> City Council introduce and adopt Resolution No. 4535.		

**Background Summary:**

On November 17, 2008, Auburn City Council passed Resolution No. 4416 that established an initial six month moratorium on development within the Federal Emergency Management Agency (FEMA) identified 100-year floodplain. The City Council enacted this moratorium in response to the finding by the National Marine Fisheries Service (NMFS) that administration of the National Flood Insurance Program (NFIP) jeopardizes species protected under the Endangered Species Act (ESA). The purpose of the moratorium was to give the federal agencies time to develop technical assistance for local jurisdictions, and in the interim, limit liability to private parties and the City.

Subsequent to the November 17, 2008 City Council meeting, the City has taken the following actions:

- City staff formed a staff level floodplain moratorium working group to review development proposals and those projects that have no impact on the floodplain (i.e. interior remodels, removal of fill or impervious surface, demolition, etc.).
- Staff organized and led a public information meeting on the moratorium and Biological Opinion on December 10, 2008, which was attended by over 50 people.
- Following public testimony at the January 5, 2009 required public hearing for the moratorium, Mayor Lewis requested staff to coordinate the formation and operation of a community task force to assist in resolving this issue. The community task force has met three times.
- The City Council adopted Resolution No. 4442 on January 20, 2009 amending the moratorium to allow processing boundary line adjustments, environmental review applications, and development applications on those portions of a property not wholly impacted by the 100-year floodplain.

L1102-1

O3.10.8

<b>Reviewed by Council &amp; Committees:</b> <input type="checkbox"/> Arts Commission <input type="checkbox"/> Airport <input type="checkbox"/> Hearing Examiner <input type="checkbox"/> Human Services <input type="checkbox"/> Park Board <input type="checkbox"/> Planning Comm.  <b>COUNCIL COMMITTEES:</b> <input checked="" type="checkbox"/> Finance <input type="checkbox"/> Municipal Serv. <input checked="" type="checkbox"/> Planning & CD <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Other _____	<b>Reviewed by Departments &amp; Divisions:</b> <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Building  <input type="checkbox"/> Cemetery  <input type="checkbox"/> Finance  <input type="checkbox"/> Fire  <input checked="" type="checkbox"/> Legal  <input checked="" type="checkbox"/> Public Works  <input type="checkbox"/> Information Services         </div> <div> <input type="checkbox"/> M&amp;O  <input type="checkbox"/> Mayor  <input type="checkbox"/> Parks  <input checked="" type="checkbox"/> Planning  <input type="checkbox"/> Police  <input type="checkbox"/> Human Resources         </div> </div>
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**Action:**

Committee Approval: ☐ Yes ☐ No  
 Council Approval: ☐ Yes ☐ No      Call for Public Hearing \_\_\_\_/\_\_\_\_/\_\_\_\_  
 Referred to \_\_\_\_\_ Until \_\_\_\_/\_\_\_\_/\_\_\_\_  
 Tabled \_\_\_\_\_ Until \_\_\_\_/\_\_\_\_/\_\_\_\_

<b>Councilmember:</b> Norman	<b>Staff:</b> Baker
<b>Meeting Date:</b> November 2, 2009	<b>Item Number:</b> VIII.B.1

- The City of Auburn organized a regional meeting regarding the NMFS Biological Opinion on March 23, 2009. Approximately 50 people attended the meeting, including representatives from the community task force, six other jurisdictions, and FEMA.
- The City Council adopted Resolution No. 4476 on May 4, 2009, extending the moratorium to November 18, 2009.
- Staff from Auburn, and other cities and counties in Western Washington were invited by FEMA to participate in a focus group and provide comments on a model ordinance being developed by FEMA for use by local governments participating in the NFIP. The focus group met on August 6, 2009 and September 24, 2009 to provide review comments and discuss issues raised by the initial drafts of the model ordinance.
- On October 19, 2009, the City Council held a duly noticed public hearing where it heard testimony from the public regarding a proposed extension of the moratorium.

On October 23, 2009, FEMA communicated to the City that the agency expects to provide the City with the final model ordinance and related guidance documents in January 2010. In order to continue to limit liability for private parties and the City pending receipt and implementation of the FEMA model ordinance, staff is recommending extending the moratorium for up to an additional six months.

**RESOLUTION NO. 4 5 3 5**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, EXTENDING THE MORATORIUM CREATED AND ESTABLISHED BY RESOLUTION NO. 4416, AS AMENDED BY RESOLUTIONS 4442 AND 4476, RELATED TO THE FILING, RECEIPT, AND APPROVAL OF APPLICATIONS FOR DEVELOPMENT WITHIN AREAS OF THE CITY LOCATED WITHIN, IN WHOLE OR IN PART, FLOODPLAINS AS DETERMINED BY THE FEDERAL EMERGENCY MANAGEMENT ADMINISTRATION

WHEREAS, Section 35A.63.220 of the Revised Code of Washington (RCW) authorizes the City Council to establish a moratorium for an initial period of six months, subject to subsequent extensions, approved by separate council action, provided that a subsequent public hearing is held on the moratorium within at least sixty (60) days of its adoption, at which time findings of fact could be made; and

WHEREAS, the City of Auburn has territory within its corporate boundaries that is located within both the current and the proposed Federal Emergency Management Administration (FEMA) designated floodplains; and

WHEREAS, FEMA and the National Marine Fisheries Service (NMFS) have collaborated on a position paper that seeks to prevent continued degradation of existing floodplain, and to promote low impact development in floodplain areas of the region that could effect endangered species; and

WHEREAS, the guidelines and ultimate responses and strategies to address the FEMA/NMFS concerns have not yet been fully developed and implemented; and

WHEREAS, FEMA and NMFS have taken the position that if a permitting agency, such as the City of Auburn, grants permits in floodplain areas within its boundaries that are later determined to adversely impact the floodplains and/or endangered species, the permitting agency will be liable for the resulting “take” on endangered species; and

WHEREAS, FEMA and NMFS recommended that jurisdictions that have territory within the floodplains employ moratoria to preserve and protect endangered species and to avoid the take of such endangered species through development that does not meet their intended goals of low impact development; and

WHEREAS, even though the City has implemented and enforced FEMA’s minimum standards as they existed prior to this recent NMFS biological opinion, NMFS has determined that FEMA’s standards are not sufficient to avoid the taking of endangered species; and

WHEREAS, pursuant to Resolution No. 4416, the Auburn City Council created and established a moratorium on the filing, receipt and approval of applications for development within areas of the City located within, in whole or in part, floodplains as depicted in the most currently approved floodplain maps as published by FEMA, and scheduled a public hearing for January 5, 2009 as required by statute; and

WHEREAS, following the public hearing on the moratorium heard on January 5, 2009, the City Council adopted Resolution 4442, which modified the moratorium to assure that any development that does occur within floodplains

within the City of Auburn develops in a way that meets the requirements of FEMA and NMFS to preserve and protect endangered species, and that a moratorium to assure such compliance is appropriate until the regulations have been developed which would implement the strategies of protecting the endangered species in floodplain development, taking into account the concerns expressed at said public hearing; and

WHEREAS, FEMA and NMFS have not, as of the date of this Resolution, provided the regulated jurisdictions with an approved model ordinance or other guidelines sufficient to allow the City to revise its laws and policies in order to avoid the taking of endangered species; and

WHEREAS, the purpose of the moratorium was to give these federal agencies time to complete technical assistance for local jurisdictions, and in the interim, limit liability to private parties and the city; and

WHEREAS, since the moratorium was first established, the City has taken the following actions:

- City staff formed a staff floodplain moratorium working group to review development proposals and move forward those projects that have no impact on the floodplain (i.e. interior remodels, removal of fill or impervious surface, demolition, etc.)
- Staff organized and led a public information meeting on the moratorium and Biological Opinion attended by over fifty people on December 10, 2008.
- After testimony on this issue at the public hearing on the January 5, 2009, City Council meeting, the Mayor requested that staff form a community

task force to assist in resolving this issue. That community task force has met three times.

- The City Council approved an amendment to the moratorium (Resolution No. 4442), allowing processing boundary line adjustments, environmental review applications, and development applications on those portions of a property not wholly impacted by the 100-year floodplain.

- Staff have continued to communicate with FEMA and NMFS, and the City of Auburn organized a regional meeting regarding the NMFS Biological Opinion on March 23, 2009. The meeting was attended by approximately fifty people, including representatives from the City's community task force, six other jurisdictions, and FEMA.

- The City Council approved an amendment to the moratorium (Resolution No. 4476), extending the moratorium to November 18, 2009.

- Staff from Auburn, and seven other cities and counties in Western Washington were asked to participate in a focus group and provide comments on a model ordinance. The focus group met on August 6, 2009 and September 24, 2009 to provide review comments and discuss issues raised by the initial drafts of the model ordinance. FEMA advises that the model ordinance is expected to be completed and available to the affected cities early in 2010; and

WHEREAS, in order to continue to limit liability for private parties and the City, staff is recommending extending the moratorium six months to await the model ordinance.

WHEREAS, on the 19th day of October, 2009, a duly noticed public hearing was held on the proposal to extend the moratorium, and the Auburn City Council has considered the comments and statements made therein.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, HEREBY RESOLVES as follows:

Section 1. Findings. The Council adopts the recital clauses of this Resolution as Findings of Fact, where applicable, and further finds that FEMA and NMFS have still not provided standards to the City that allow for development in the floodplain while adequately protecting endangered species, necessitating an extension of the moratorium;

Section 2. Extension of Moratorium. The City Council hereby extends the moratorium established by Resolution No. 4416, amended by Resolution 4442, and extended by Resolution 4476 for an additional six (6) months from the effective date hereof, November 2, 2009, until May 1, 2010. All other conditions of Resolution No. 4416 as modified by Resolution No. 4442 shall remain in full force and effect.

Section 3. Terms of Moratorium. The moratorium as established and created by Resolution No. 4416, as modified by Resolution No. 4442, and extended by Resolution No. 4476 and this Resolution shall continue to be in effect for a period of six (6) months beginning November 2, 2009 unless repealed, extended or modified by the City Council in accordance with RCW 35A.63.220. Provided, that the moratorium shall automatically expire upon the effective date of a City of Auburn ordinance establishing and implementing

strategies to meet the FEMA-NMFS floodplain development/endangered species concerns.

Section 4. Administrative Implementation. That the Mayor is authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation.

Section 5. Effective Date. That this Resolution shall take effect and be in full force upon passage and signatures hereon and on November 2, 2009.

Dated and Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

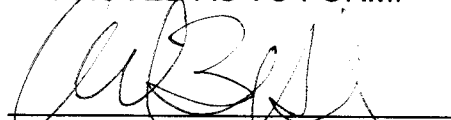
CITY OF AUBURN

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PETER B. LEWIS  
MAYOR

ATTEST:

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Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

  
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Daniel B. Heid, City Attorney